

**75-10-901. Short title.** Sections 75-10-901 through 75-10-945 may be cited as the "Montana Megalandfill Siting Act".

**75-10-902. Intent -- purpose.** (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Megalandfill Siting Act. It is the legislature's intent that the requirements of the Megalandfill Siting Act provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations, to protect the environment from degradation and prevent unreasonable depletion and degradation of natural resources, and to provide for administration and enforcement to attain these objectives.

(3) The construction of solid waste facilities that dispose of over 200,000 tons of waste a year (megalandfills) may be necessary to meet increasing state and national needs for solid waste disposal capacity. However, because of the volume of waste processed, megalandfills may adversely affect the environment, surrounding communities, and the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and operation of megalandfills will produce minimal adverse effects on the environment and upon the citizens of this state by providing that a megalandfill may not be constructed or operated within this state without a certificate of site acceptability pursuant to 75-10-916 and a license to operate acquired pursuant to 75-10-221 and 75-10-933.

**75-10-903. Definitions.** As used in 75-10-901 through 75-10-945, the following definitions apply:

(1) "Application" means an application for a certificate and license submitted in accordance with 75-10-916 through 75-10-930 and 75-10-933 through 75-10-935 and the rules adopted under 75-10-916 through 75-10-930 and 75-10-933 through 75-10-935.

(2) "Board" means the board of environmental review provided for in 2-15-3502.

(3) "Certificate" means the certificate of site acceptability issued by the board under 75-10-916 that is required for siting a megalandfill.

(4) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site, except that the term does not mean changes for securing geological data, including necessary borings to ascertain subsurface conditions;

(b) the modification or upgrading of an existing solid waste disposal facility into a megalandfill, except that the term does not pertain to maintenance or repair of an existing facility.

(5) "Department" means the department of environmental quality provided for in 2-15-3501.

(6) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste into or onto the land so that the solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any water, including ground waters.

(7) (a) "Megalandfill" or "facility" means, except as provided in subsection (7)(b), any new or existing solid waste landfill facility that accepts more than 200,000 tons a year of solid waste or any ash monofill that accepts 35,000 tons or more a year of solid waste incinerator ash, either fly ash or bottom ash.

(b) An existing solid waste landfill facility that accepted 100,000 tons a year of solid waste as of December 31, 1991, is not considered a megalandfill or facility until it accepts more than 300,000 tons a year of solid waste.

(8) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(9) (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; wood products or wood byproducts; and inert materials.

(b) Solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of environmental quality, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable byproducts.

(10) (a) "Solid waste landfill" means any publicly or privately owned landfill or landfill unit that receives household waste or other types of waste, including commercial waste, nonhazardous sludge, and industrial solid waste.

(b) The term does not include land application units, surface impoundments, injection wells, or waste piles.

**75-10-906. Adoption of rules by board.** The board may adopt rules implementing the certification provisions of 75-10-901 through 75-10-945, including rules regarding the filing and contents of the application, proof of service and notice requirements, environmental factors to be evaluated, filing fee, hearings process, and other components of the certificate and certification process that the board considers necessary.

**75-10-907. Adoption of rules by department.** The department may adopt rules implementing the licensing provisions of 75-10-901 through 75-10-945, including rules regarding the contents of the application, monitoring, and other components of the license and licensing process that the department considers necessary.

**75-10-908. Contracts for information.** (1) The department may contract with a potential applicant under 75-10-901 through 75-10-945 in advance of the filing of a formal application for the development of information or the provision of services by the department required under 75-10-901 through 75-10-945.

(2) Payments made to the department under a contract must be credited against the fee payable under 75-10-921.

**75-10-909. Grants, gifts, and funds.** The department may receive grants, gifts, and other funds from any public or private source to assist in its activities under 75-10-901 through 75-10-945.

**75-10-910. Money to solid waste management account.** All fees, taxes, fines, and penalties collected under 75-10-901 through 75-10-945, except those collected by a justice's court, must be deposited in the solid waste management account as provided in 75-10-117 for use by the department in carrying out its functions and responsibilities related to solid waste management.

**75-10-913. Annual long-range plan submitted -- contents -- available to public.** (1) A person may not file an application for a certificate of site acceptability required by 75-10-916 unless the megalandfill has been adequately identified in a long-range plan at least 2 years prior to acceptance of an application by the department.

(2) The annual long-range plan must be submitted by July 1 of each year and must include the following:

- (a) the general location, size, and type of all facilities to be owned and operated by the person for which construction is projected during the ensuing 2 years, as well as those facilities to be closed during the planning period;
- (b) a description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;
- (c) projections of the demand for the service rendered by the person and an explanation of the basis for those projections and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(d) additional information that the department by rule, on its own initiative, or upon the advice of interested state agencies requests in order to carry out the purposes of 75-10-901 through 75-10-945.

(3) The plan must be furnished to the governing body of each county in which any facility included in the plan under subsection (2)(a) is proposed to be located and must be made available to the public by the department. The applicant shall give public notice throughout the state by publishing at least once a week for 2 consecutive weeks a summary of the proposed plan in newspapers of general circulation. The plan must also be filed with the environmental quality council, the department of transportation, the department of fish, wildlife, and parks, and the department of natural resources and conservation. Interested persons may obtain a copy of the plan by written request and payment to the department of the costs of copying the plan.

**75-10-914. Study of included facilities.** If a person identifies a proposed facility in its long-range plan, submitted pursuant to 75-10-913, as one on which construction is proposed within the 2-year period following submission of the plan, the department shall begin to examine and evaluate the proposed site to determine whether construction of the proposed facility would unduly impair the environmental, social, and economic values described in 75-10-920. The study may be continued until a person files an application for a certificate under 75-10-916. Information gathered under this section may be used to support findings and recommendations required for issuance of a certificate and a license.

**75-10-916. Certificate required.** (1) A person may not construct a megalandfill in the state without first applying for and obtaining a certificate of site acceptability from the board.

(2) A certificate may only be issued pursuant to 75-10-916 through 75-10-930.

**75-10-917. Certificate transferable.** A certificate may be transferred, subject to the approval of the board, to a person who agrees to comply with the terms, conditions, and modifications contained in 75-10-901 through 75-10-945.

**75-10-918. Application -- filing and contents -- proof of service and notice.** (1) (a) An applicant shall file with the department an application for a certificate under 75-10-916 in a form that the board requires, containing the following information:

- (i) a description of the proposed location and of the facility to be built;
- (ii) a summary of any studies that have been made of the environmental, social, and economic impacts of the facility;
- (iii) a description of at least three reasonable alternate locations for the facility, a general description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the proposed location is best suited for the facility;
- (iv) baseline data for the primary and reasonable alternate locations;
- (v) at the applicant's option, an environmental study plan to satisfy the requirements of 75-10-901 through 75-10-945; and

(vi) other information that the applicant considers relevant or that the board by order or rule may require or that the department by order or rule may require.

(b) A copy or copies of the studies referred to in subsection (1)(a)(ii) must be filed with the department, if ordered, and must be available for public inspection.

(2) An application must be accompanied by proof of service of a copy of the application on the chief executive officer of each unit of local government, each county commissioner, city or county planning board, and solid waste district, and each federal agency charged with the duty of protecting the environment or of planning land use located in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located and on the following state government agencies:

- (a) environmental quality council;
- (b) department of fish, wildlife, and parks;
- (c) department of transportation; and
- (d) department of natural resources and conservation.

(3) An application must be accompanied by proof that public notice was given to persons residing in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located by publication of a summary of the application in newspapers of general circulation that will substantially inform those persons of the application.

**75-10-919. Supplemental material -- amendments.** (1) An application for an amendment of an application or a certificate must be in a form and contain information as the board by rule or the department by order prescribes. Notice of an amendment must be given as provided in 75-10-918(3).

(2) An application may be amended by an applicant any time prior to the report made by the department under 75-10-922. If the proposed amendment prevents the department from carrying out its duties and responsibilities under 75-10-901 through 75-10-945, the department may require additional filing fees as the department determines necessary or may require a new application and filing fee.

(3) The applicant shall submit supplemental material in a timely manner as requested by the department or as offered by the applicant to explain, support, or provide details with respect to an item described in the original application. This supplemental material may be submitted without filing an application for an amendment. The department's determination as to whether information is supplemental or whether an application for amendment is required is conclusive.

**75-10-920. Environmental, social, and economic factors evaluated during certification.** In evaluating applications for a certificate of site acceptability, the department shall give consideration to the following list of factors and regulations, where applicable, and may by rule add to the factors enumerated in this section:

(1) siting criteria for municipal solid waste landfills consistent with federal requirements as described in 40 CFR part 258;

(2) siting criteria described under the Montana Solid Waste Management Act, Title 75, chapter 10, part 2, and rules adopted under that part;

(3) the state solid waste management and resource recovery plan;

(4) solid waste disposal needs, including:

- (a) availability and desirability of alternative methods of solid waste disposal in lieu of the proposed facility;
- (b) promotional activities of the applicant that may have given rise to the need for the facility;
- (c) social changes resulting from the facility, including protection of public health and environmental quality; and
- (d) integrated waste management activities that could reduce the need for additional solid waste disposal capacity;

(5) land use impacts, including:

- (a) the area of land required and its ultimate use;
- (b) consistency with state and regional solid waste plans;
- (c) consistency with existing and projected nearby land use;
- (d) alternative uses of the site;

(e) the impact on the population already in the area and the population attracted by construction or operation of the facility;

- (f) the impact of availability of solid waste disposal at the facility on growth patterns and population dispersal;
- (g) construction materials and practices, including quality control and quality assurance plans to be followed during construction of all phases of the proposed facility;
- (h) scenic impacts;
- (i) the effects on natural systems, wildlife, and plant life;
- (j) the impacts on important historic, architectural, archaeological, and cultural areas and features;
- (k) the impacts on public facilities and accommodations;
- (l) opportunities for joint use with solid waste disposal-intensive industries; and
- (m) the economic impact on the local area, local government infrastructure, and existing industry;
- (6) water resources impacts, including:
  - (a) hydrologic studies of the adequacy of water supply and the impact of the facility on streamflow, lakes, and reservoirs;
  - (b) hydrologic studies of the impact of the facility on ground water, including vadose zone studies describing the potential for leachate to migrate from the facility to ground water;
  - (c) an inventory of effluents, including physical, chemical, and biological characteristics;
  - (d) hydrologic studies of effects of effluents on receiving waters;
  - (e) the effect of the facility on water quality;
  - (f) the facility's projected water uses;
  - (g) the effects on plant and animal life, including algae, macroinvertebrates, and fish population;
  - (h) effects on unique or otherwise significant ecosystems, such as wetlands; and
  - (i) ground water, vadose zone, and methane gas monitoring systems and programs;
- (7) characteristics of solid wastes that will be disposed of at the facility, including:
  - (a) the rate of solid waste disposal;
  - (b) the solid waste handling practices proposed to be used;
  - (c) the present and expected future physical and chemical characteristics of the solid waste; and
  - (d) inspection practices for preventing the illegal dumping of hazardous waste into the facility;
- (8) transportation practices, including:
  - (a) route and mode of transporting waste;
  - (b) environmental, social, and economic impacts of transportation facilities; and
  - (c) transfer facilities.

**75-10-921. Filing fee -- accountability -- refund -- use.** (1) (a) The applicant shall pay to the department a filing fee as provided in this section based upon the department's estimated costs of processing the application for a certificate. The filing fee must be deposited in the solid waste management account for the use of the department in administering 75-10-901 through 75-10-945. The initial filing fee may not exceed the following scale based upon the megalandfill's projected annual tonnage of waste:

- (i) a base fee of \$40,000; plus
- (ii) 20 cents per ton for every ton of waste over 200,000 tons for a new or existing megalandfill or facility not subject to 75-10-903(6)(b); or
- (iii) 20 cents per ton of waste over 300,000 tons for an existing megalandfill or facility pursuant to 75-10-903(6)(b).

(b) The department may allow a credit against the fee payable under this section for the applicant's costs of developing information or providing services required under 75-10-901 through 75-10-945 or required for preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, part 1, or the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq. The applicant may submit the information or a description of the services performed to the department, together with an accounting of the expenses incurred in preparing the information or performing the services. The department shall evaluate the applicability, validity, and usefulness of the data or services and determine the expenses that may be credited against the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time be reduced if the department determines that the amount to be credited is necessary to carry out its responsibilities under 75-10-901 through 75-10-945.

(2) (a) The department may contract with an applicant after the filing of a formal application for the development of information or the provision of services required under 75-10-901 through 75-10-945. The contract may continue an agreement entered into pursuant to 75-10-908. Payments made to the department under a contract must be credited against the fee payable under this section. The revenue derived from the filing fee must be sufficient to enable the department and the board to carry out their responsibilities under 75-10-901 through 75-10-945. The department may amend a contract to require additional payments for necessary expenses up to the limits set forth in subsection (1)(a) upon 30 days' notice to the applicant. The department and applicant may enter into a contract that exceeds the scale provided in subsection (1)(a).

(b) If a contract is not entered into, the applicant shall pay the filing fee in installments in accordance with a schedule of installments developed by the department; however, an installment may not exceed 20% of the total filing fee provided for in subsection (1).

(3) The applicant is entitled to an accounting of money spent and to a refund with interest at the rate of 6% a year of the portion of the filing fee not spent by the department in carrying out its responsibilities under 75-10-901 through 75-10-945. A refund must be made after all administrative and judicial remedies have been exhausted by all parties.

to the certification proceedings.

(4) The revenue derived from the filing fees must be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out other responsibilities of the department and the board under 75-10-901 through 75-10-945.

**75-10-922. Study, evaluation, and report on proposed facility.** (1) After receipt of an application, the department shall within 90 days notify the applicant in writing that:

(a) the application is accepted as complete; or  
(b) the application is not complete and list the deficiencies. Upon correction of these deficiencies and resubmission by the applicant, the department shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-10-913, 75-10-914, and 75-10-916 through 75-10-922, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-10-929. The department shall use, to the extent it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) Except as provided in 75-1-205(4) and 75-1-208(4)(b), within 1 year following acceptance of a complete application for a facility, the department shall make a report to the board that must contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, Title 75, chapter 1, if applicable.

**75-10-923. Voiding of application.** An application may be voided by the department for:

(1) any material and knowingly false statement in the application or in accompanying statements or studies required of the applicant;

(2) failure to file an application in substantially the form and content required by 75-10-918 and the rules adopted under 75-10-918; or

(3) failure to deposit the filing fee as provided in 75-10-921.

**75-10-924. Hearing date — location — department to act as staff.** (1) Upon receipt of the department's report submitted under 75-10-922, the board shall set a date for a hearing to begin not more than 120 days after receipt of the report. A certification hearing must be conducted by the board in the county seat of the county in which the facility or the greatest portion of the facility is to be located.

(2) Except as provided in 75-10-926, the department shall act as the staff for the board throughout the decisionmaking process and the board may request that the department present testimony or cross-examine witnesses as the board considers necessary and appropriate.

**75-10-925. Certificate amendments.** (1) Within 30 days after notice of an amendment to a certificate is given as provided in 75-10-919, including notice to all active parties to the original proceeding, the department shall determine whether the proposed change in the facility would result in a material increase in any environmental, social, and economic impacts caused by the facility or a substantial change in the location of all or a portion of the facility as set forth in the certificate. If the department determines that the proposed change would result in a material increase in any environmental impact caused by the facility or a substantial change in the location of all or a portion of the facility, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate. After the hearing, the board shall grant, deny, or modify the amendment with conditions it considers appropriate.

(2) In cases where the department determines that the proposed change in the facility would not result in a material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility, the board shall grant the amendment either as applied for or upon terms or conditions as the board considers appropriate unless the department's determination is appealed to the board within 15 days after notice of the department's determination is given.

(3) If the department or the board, under subsection (4), determines that a hearing is required because the proposed change would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the applicant has the burden of showing by clear and convincing evidence that the amendment should be granted.

(4) If the department determines that the proposed change in the facility would not result in a material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility and a hearing is required because the department's determination is appealed to the board as provided in subsection (2), the appellant has the burden of showing by clear and convincing evidence that the proposed change in the facility would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility as set forth in the certificate.

**75-10-926. Hearing examiner -- restrictions -- duties.** (1) The board shall appoint a hearing examiner to conduct certification proceedings under 75-10-901 through 75-10-945. The hearing examiner may not be a member of the board or an employee of the department or the board. A hearing examiner must be appointed within 20 days after the department's report has been filed with the board.

(2) A prehearing conference must be held, following notice, within 60 days after the department's report has been filed with the board.

(3) The prehearing conference must be organized and supervised by the hearing examiner.

(4) The prehearing conference must be directed toward a determination of the issues presented by the application, the department's report, and an identification of the witnesses and documentary exhibits to be presented by the active parties who intend to participate in the hearing.

(5) The hearing examiner shall require the active parties to submit, in writing, and serve upon the other active parties all direct testimony that they propose and any studies, investigations, reports, or other exhibits that any active party wishes the board to consider. These written exhibits and any documents that the board itself wishes to use or rely on must be submitted and served at least 20 days prior to the date set for the hearing. For good cause shown, the hearing examiner may allow the introduction of new evidence at any time.

(6) The hearing examiner shall allow discovery that must be completed before the commencement of the hearing upon good cause shown and under other conditions as the hearing examiner prescribes.

(7) Public witnesses and other interested public parties may appear and present oral testimony at the hearing or submit written testimony to the hearing examiner at the time of their appearance. These witnesses are subject to cross-examination.

(8) The hearing examiner shall issue a prehearing order specifying the issues of fact and of law, identifying the witnesses of the active parties, naming the public witnesses and other interested parties who have submitted written testimony in lieu of appearance, outlining the order in which the hearing will proceed, setting forth those criteria listed in 75-10-929 as to which no issue of fact or law has been raised and that are conclusively presumed and are not subject to further proof except for good cause shown, and listing any other special rules to expedite the hearing that the hearing examiner adopts with the approval of the board.

(9) At the conclusion of the hearing, the hearing examiner shall declare the hearing closed and shall, within 60 days of that date, prepare and submit to the board proposed findings of fact, conclusions of law, and a recommended decision.

(10) The hearing examiner appointed to conduct a certification proceeding under this section shall ensure that the time of the proceeding, from the date the department's report is filed with the board until the recommended report and order of the examiner is filed with the board, does not exceed 9 calendar months unless extended by the board for good cause.

(11) The board or hearing examiner may waive all or a portion of the procedures set forth in subsections (2) through (8) to expedite the hearing for a facility when the department has recommended approval of a facility and no objections have been filed.

**75-10-927. Parties to certification proceeding -- waiver -- statement of intent to participate.** (1) The parties to a certification proceeding or to a proceeding involving the issuance of a decision, opinion, order, certification, or permit by the board under 75-10-901 through 75-10-945 may include as active parties:

(a) the applicant;

(b) each political entity, unit of local government, and government agency entitled to receive service of a copy of the application under 75-10-918;

(c) a person entitled to receive service of a copy of the application under 75-10-918;

(d) a nonprofit organization formed in whole or in part to:

(i) promote conservation or natural beauty;

(ii) protect the environment, personal health, or other biological values;

(iii) preserve historical sites;

(iv) promote consumer interests;

(v) represent commercial and industrial groups; or

(vi) promote the orderly development of the areas in which the facility is to be located; and

(e) any other interested person who establishes an interest in the proceeding.

(2) The department must be an active party in any certification proceeding in which the department recommends denial of all or a portion of a facility.

(3) The parties to a certification proceeding may also include, as public parties, any Montana citizen and any party referred to in subsections (1)(b) through (1)(e).

(4) A party waives the right to be a party if the party does not participate in the hearing before the board.

(5) Each unit of local government entitled to receive service of a copy of the application under 75-10-918 shall file with the board a statement showing whether the unit of local government intends to participate in the certification proceeding. If the unit of local government does not intend to participate, it shall list in this statement its reasons for failing to do so. This statement of intent must be published before the proceeding begins in a newspaper of general circulation within the jurisdiction of the applicable unit of local government.

**75-10-928. Record of hearing – procedure – rules of evidence – burden of proof.** (1) Any studies, investigations, reports, or other documentary evidence, including those prepared by the department, that any party wishes the board to consider or that the board itself expects to use or rely upon must be made a part of the record.

(2) A record must be made of the hearing and of all testimony taken.

(3) In a certification proceeding held under 75-10-924, the applicant has the burden of showing by clear and convincing evidence that the application should be granted and that the criteria of 75-10-929 are met.

(4) All proceedings under 75-10-924 through 75-10-928 are governed by the procedures set forth in 75-10-924 through 75-10-928, the procedural rules adopted by the board, and the Montana Rules of Evidence unless one or more rules of evidence are waived by the hearing examiner upon a showing of good cause by one or more of the parties to the hearing. No other rules of procedure or evidence apply except that the contested case procedures of the Montana Administrative Procedure Act apply if not in conflict with the procedures set forth in 75-10-924 through 75-10-928 or the procedural rules adopted by the board.

**75-10-929. Decision of board – findings necessary for certification.** (1) Within 90 days after submission of the recommended decision by the department, the board shall make complete findings, issue an opinion, and render a final decision upon the record, either granting or denying the application for a certificate as filed or granting it upon terms, conditions, or modifications of the siting of the facility as the board considers appropriate.

(2) The board may not grant a certificate either as proposed by the applicant or as modified by the board unless it finds and determines:

(a) the nature of the probable environmental impact;

(b) that the facility minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;

(c) that the location of the facility as proposed conforms to applicable state and local laws and regulations, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside of the directly affected government subdivisions;

(d) that the facility will serve the public interest;

(e) any impacts of the facility according to each of the criteria listed in 75-10-920;

(f) the solid waste disposal needs listed in 75-10-920(4); and

(g) that the applicant has fully mitigated the loss of wildlife habitat, through either onsite or offsite habitat improvements.

(3) In determining that the facility will serve the public interest, the board shall consider:

(a) the items listed in subsections (2)(a) and (2)(b);

(b) the benefits to the applicant and the state resulting from the proposed facility;

(c) the effects of the economic activity resulting from the proposed facility;

(d) the effects of the proposed facility on the public health, welfare, and safety; and

(e) any other factors that it considers relevant.

**75-10-930. Conditions imposed.** If the board determines that the location of all or a part of the proposed megalandfill should be modified, it may condition its certificate upon the modification, provided that the persons residing in the area affected by the modification have been given reasonable notice of the modification.

**75-10-933. License required.** (1) A person may not commence to construct a megalandfill in the state without first applying for and obtaining a license pursuant to 75-10-221. The licensing process must be concurrent with the certification process required in 75-10-916 through 75-10-930.

(2) The department shall make the decision to grant or deny the license within 30 days of the certification decision, as provided in 75-10-929.

(3) Once a license has been issued, a megalandfill may not be constructed, operated, or maintained except in conformity with the license and any terms, conditions, and modifications contained in the license.

**75-10-934. License transferable.** A license may be transferred, subject to the approval of the department, to a person who agrees to comply with the terms, conditions, and modifications contained in 75-10-901 through 75-10-945.

**75-10-935. Opinion issued with decision – contents.** (1) In rendering a decision on an application for a license for a megalandfill, the department shall issue an opinion stating its reasons for the action taken.

(2) In addition to the requirements of 75-10-221, any license issued by the department shall include the following:

(a) an environmental evaluation statement related to the megalandfill being certified. The statement must include but

not be limited to analysis of the following information:

- (i) the environmental impact of the proposed facility;
  - (ii) any adverse environmental effects that cannot be avoided by issuance of the license;
  - (iii) problems and objections raised by other federal and state agencies and interested groups; and
  - (iv) alternatives to the proposed facility.
- (b) a plan for monitoring environmental effects of the proposed facility;
- (c) a plan for monitoring the certified megalandfill site between the time of certification and completion of construction; and
- (d) a statement signed by the applicant showing agreement to comply with the requirements of 75-10-901 through 75-10-945 and the conditions of the certificate.

**75-10-938. Monitoring.** The department shall monitor the operations of all certificated facilities to ensure continuing compliance with 75-10-901 through 75-10-945 and with certificates issued under 75-10-916 and to discover and prevent noncompliance with 75-10-901 through 75-10-945 or certificates issued under 75-10-916.

**75-10-939. Revocation or suspension of license.** A license may be revoked or suspended by the department following notice and an opportunity for a hearing before the department for:

- (1) any material false statement in the application or in accompanying statements or studies required of the applicant if a true statement would have warranted the department's refusal to grant a license;
- (2) failure to comply with the terms or conditions of the certificate; or
- (3) violation of any provision of 75-10-901 through 75-10-945, rules adopted under 75-10-901 through 75-10-945, or orders of the department.

**75-10-940. Enforcement by residents.** (1) A person with knowledge that a requirement of 75-10-901 through 75-10-945 or a rule adopted under 75-10-901 through 75-10-945 is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that states the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the statements subjects the person to the penalties prescribed for a violation of 45-7-202.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the person may bring an action of mandamus in the district court of the first judicial district of Montana. If the court finds that a requirement of 75-10-901 through 75-10-945 or a rule adopted under 75-10-901 through 75-10-945 is not being enforced, the court may order the public officer or employee whose duty it is to enforce the requirement or rule to perform those duties. If he fails to do so, the public officer or employee must be held in contempt of court and is subject to the penalties provided by law.

**75-10-941. Action to recover damages to water supply.** An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from a surface or underground source may sue a person to recover damages for contamination, diminution, or interruption of the water supply proximately resulting from the operation of a facility. The remedy provided in this section does not exclude the use of any other remedy that may be available under the laws of the state.

**75-10-942. Judicial review of department and board decisions.** (1) An applicant aggrieved by the final decision of the board on an application for a certificate or the final decision of the department on an application for a license may obtain judicial review of that decision by filing a petition in district court.

(2) The judicial review procedure is the same as that for contested cases under Title 2, chapter 4, part 7.

(3) This section does not prohibit the department from holding a hearing on all matters that are not the subject of a pending appeal by the applicant under subsection (1).

**75-10-943. Penalties for violation – civil action by attorney general.** (1) (a) A person who commences to construct or operate a megalandfill without obtaining a certificate required under 75-10-916 and a license required under 75-10-933, who constructs, operates, or maintains a facility other than in compliance with the certificate or violates any other provision of 75-10-901 through 75-10-945 or any rule or order adopted under 75-10-901 through 75-10-945, or who knowingly submits false information in any report, long-range plan, or application required by 75-10-901 through 75-10-945 is liable for a civil penalty as provided in subsection (2).

(b) Each day of a continuing violation constitutes a separate offense.

(c) The penalty is recoverable in a civil suit brought by the attorney general on behalf of the state in the district court



of the first judicial district of Montana.

(2) A person who knowingly violates the provisions of subsection (1) shall be fined not more than \$25,000 for each violation or be imprisoned for not more than 1 year, or both. Each day of a continuing violation constitutes a separate offense.

(3) In addition to any penalty provided in subsection (1) or (2), whenever the department determines that a person is violating or is about to violate any of the provisions of 75-10-901 through 75-10-945, it may refer the matter to the attorney general who may bring a civil action on behalf of the state in the district court of the first judicial district of Montana for injunctive or other appropriate relief against the violation and to enforce 75-10-901 through 75-10-945 or a certificate issued under 75-10-916. Upon a proper showing, a permanent or preliminary injunction or temporary restraining order must be granted without bond.

(4) The department shall also enforce 75-10-901 through 75-10-945 and may bring legal actions to accomplish the enforcement through its own legal counsel.

(5) All fines and penalties collected must be deposited in the solid waste management account for the use of the department in administering 75-10-901 through 75-10-945.

**75-10-944. Order not stayed by appeal – stay or suspension by court – limitations.** An appeal from a department order does not automatically stay or suspend the operation of the order. The court may, upon motion by a party, stay or suspend, in whole or in part, the operation of the department's order on terms the court considers just. The court's action must be in accordance with the practice of courts exercising equity jurisdiction, subject to the following limitations:

(1) A stay may not be granted without notice to the parties and an opportunity to be heard by the court.

(2) A department order may not be stayed or suspended without finding that irreparable damage would otherwise result to the party seeking the stay or suspension, and a stay or suspension must specify the nature of the damage.

**75-10-945. Surety bond.** If an order of the department is stayed or suspended, the court may require a bond with good and sufficient surety conditioned that the party petitioning for review answer for all damages caused by the delay in enforcing the order of the department. The cost of the bond is not chargeable to the applicant as part of the fee. If the party petitioning for review prevails upon final resolution of an appeal, the party does not forfeit bond and is not responsible for damages caused by delay.

**75-10-950. Definitions.** As used in 75-10-950 through 75-10-954, the following definitions apply:

(1) "Applicant" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity that applies for a license to operate a megalandfill pursuant to 75-10-221.

(2) "Board" means the board of environmental review provided for in 2-15-3502.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) (a) "Megalandfill" means, except as provided in subsection (4)(b), any new or existing solid waste management system licensed under 75-10-221 that accepts more than 200,000 tons of solid waste a year or an ash monofill that accepts more than 35,000 tons of ash a year.

(b) An existing solid waste landfill facility that accepted 100,000 tons a year of solid waste as of December 31, 1991, is not considered a megalandfill or facility until it accepts more than 300,000 tons a year of solid waste.

(5) "Natural resource" means ground water, surface water, soil, wildlife, and other physical and biological resources as determined by the department by rule.

**75-10-951. Megalandfill financial assurance – release.** (1) As a condition of a license to operate a megalandfill under 75-10-221, an applicant shall provide financial assurance sufficient to ensure the restoration or replacement of any natural resource damaged or impaired as a result of the construction, operation, or closure of the megalandfill. The department shall determine the amount of financial assurance that must be provided based on an assessment of the license application and the applicant's estimated cost of reclaiming, restoring, or replacing natural resources that may be damaged or impaired by the applicant's proposed operations.

(2) The department shall adopt rules to specify the terms and conditions of financial assurance.

(3) To satisfy the financial assurance requirement, the applicant shall file with the department a bond that is payable to the state of Montana with a surety satisfactory to the department, conditioned upon the faithful performance of the requirements of this section and the rules of the department.

(4) The bond approved by the department may not be less than the estimated cost to the state to reclaim, restore, or replace damaged or impaired natural resources.

(5) Every 2 years the department shall evaluate the amount of the bond provided for a licensed megalandfill. If the department determines that the amount of the bond does not represent the present cost of reclaiming, restoring, or replacing natural resources that may be damaged or impaired by the operation, the department may modify the terms and conditions of the bond.

(6) The department may not release an operator from the financial assurance requirement and may not release the bond:

- (a) for a minimum of 30 years after the megalandfill has closed;
- (b) until the department determines that the natural resources associated with the megalandfill have been permanently reclaimed, restored, or replaced to the quantity and quality that prevailed prior to the commencement of the licensed operations and that the megalandfill presents no significant future threat to those natural resources; and
- (c) until a public hearing has been held. The department shall make all information that is relevant to the decision on whether to release an operator from the financial assurance requirement readily available to interested persons, and no less than 45 days prior to the public hearing the department shall:
  - (i) publish notice of the hearing in newspapers of general statewide circulation and circulation in the county where the megalandfill is located; and
  - (ii) take other appropriate measures to ensure broad distribution of the hearing notice.

(7) A person may submit to the department information relevant to the department's decision to release an operator from all or any part of the financial assurance requirement for a period of 30 days after the date of the public hearing required under subsection (6).

(8) A person may request the department to reconsider its decision to release an operator from all or any part of the financial assurance requirement based upon information the person submits to show that the licensee has not reclaimed, restored, or replaced the quantity or quality of natural resources that prevailed prior to the commencement of the licensed operations. The department's response to a request to reconsider its decision to release an operator from all or any part of the financial assurance requirement is the final agency decision.

**75-10-952. Bond forfeiture.** At the board's discretion, the failure of a licensee to reclaim, restore, or replace damaged or impaired natural resources to the department's satisfaction, as required under 75-10-951(6) or any rule adopted under 75-10-951(6), may result in bond forfeiture.

**75-10-953. Reclamation by board.** (1) Pursuant to the provisions of 75-10-950 through 75-10-954, the board may reclaim, restore, or replace any affected natural resources for which a bond has been forfeited.

(2) The board may have reclamation work done by department employees or by employees of other governmental agencies or soil conservation districts or through contracts with qualified persons.

(3) Any funds or any public works programs available to the board may be used and expended to reclaim, restore, or replace natural resources that have been damaged or impaired as a result of the construction, operation, or closure of a megalandfill. The board shall cooperate with federal, state, and private agencies to engage in cooperative projects under this section.

(4) Agents, employees, or contractors of the department may enter upon any land for the purpose of conducting studies or exploratory work to determine whether a megalandfill has been reclaimed and rehabilitated in accordance with the requirements of 75-10-951(6). Upon request of the board, the attorney general shall bring an injunctive action to restrain any interference with the exercise of the right to enter and inspect granted in this subsection.

**75-10-954. Megalandfill reclamation account – deposit of funds.** (1) There is a megalandfill reclamation account in the state special revenue fund provided for in 17-2-102.

(2) All forfeited bonds that have been or will be paid to the department under the provisions of 75-10-950 through 75-10-954 must be deposited in the account.

(3) Money in the account is available to the department for the reclamation, restoration, and replacement of natural resources damaged or impaired by the megalandfill. Unencumbered and unexpended money remaining in the account at the end of a fiscal year may not lapse but must be carried forward for the purposes of this subsection until appropriated by subsequent legislative action.

(4) All fees, fines, penalties, and other money paid to the department under the provisions of 75-10-950 through 75-10-954 must be deposited in the state general fund.

**75-10-901. Short title.** Sections 75-10-901 through 75-10-945 may be cited as the "Montana Megalandfill Siting Act".

**75-10-902. Intent -- purpose.** (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Megalandfill Siting Act. It is the legislature's intent that the requirements of the Megalandfill Siting Act provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations, to protect the environment from degradation and prevent unreasonable depletion and degradation of natural resources, and to provide for administration and enforcement to attain these objectives.

(3) The construction of solid waste facilities that dispose of over 200,000 tons of waste a year (megalandfills) may be necessary to meet increasing state and national needs for solid waste disposal capacity. However, because of the volume of waste processed, megalandfills may adversely affect the environment, surrounding communities, and the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and operation of megalandfills will produce minimal adverse effects on the environment and upon the citizens of this state by providing that a megalandfill may not be constructed or operated within this state without a certificate of site acceptability pursuant to 75-10-916 and a license to operate acquired pursuant to 75-10-221 and 75-10-933.

**75-10-903. Definitions.** As used in 75-10-901 through 75-10-945, the following definitions apply:

(1) "Application" means an application for a certificate and license submitted in accordance with 75-10-916 through 75-10-930 and 75-10-933 through 75-10-935 and the rules adopted under 75-10-916 through 75-10-930 and 75-10-933 through 75-10-935.

(2) "Board" means the board of environmental review provided for in 2-15-3502.

(3) "Certificate" means the certificate of site acceptability issued by the board under 75-10-916 that is required for siting a megalandfill.

(4) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site, except that the term does not mean changes for securing geological data, including necessary borings to ascertain subsurface conditions;

(b) the modification or upgrading of an existing solid waste disposal facility into a megalandfill, except that the term does not pertain to maintenance or repair of an existing facility.

(5) "Department" means the department of environmental quality provided for in 2-15-3501.

(6) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste into or onto the land so that the solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any water, including ground waters.

(7) (a) "Megalandfill" or "facility" means, except as provided in subsection (7)(b), any new or existing solid waste landfill facility that accepts more than 200,000 tons a year of solid waste or any ash monofill that accepts 35,000 tons or more a year of solid waste incinerator ash, either fly ash or bottom ash.

(b) An existing solid waste landfill facility that accepted 100,000 tons a year of solid waste as of December 31, 1991, is not considered a megalandfill or facility until it accepts more than 300,000 tons a year of solid waste.

(8) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(9) (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; wood products or wood byproducts; and inert materials.

(b) Solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of environmental quality, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable byproducts.

(10) (a) "Solid waste landfill" means any publicly or privately owned landfill or landfill unit that receives household waste or other types of waste, including commercial waste, nonhazardous sludge, and industrial solid waste.

(b) The term does not include land application units, surface impoundments, injection wells, or waste piles.

**75-10-906. Adoption of rules by board.** The board may adopt rules implementing the certification provisions of 75-10-901 through 75-10-945, including rules regarding the filing and contents of the application, proof of service and notice requirements, environmental factors to be evaluated, filing fee, hearings process, and other components of the certificate and certification process that the board considers necessary.

**75-10-907. Adoption of rules by department.** The department may adopt rules implementing the licensing provisions of 75-10-901 through 75-10-945, including rules regarding the contents of the application, monitoring, and other components of the license and licensing process that the department considers necessary.

**75-10-908. Contracts for information.** (1) The department may contract with a potential applicant under 75-10-901 through 75-10-945 in advance of the filing of a formal application for the development of information or the provision of services by the department required under 75-10-901 through 75-10-945.

(2) Payments made to the department under a contract must be credited against the fee payable under 75-10-921.

**75-10-909. Grants, gifts, and funds.** The department may receive grants, gifts, and other funds from any public or private source to assist in its activities under 75-10-901 through 75-10-945.

**75-10-910. Money to solid waste management account.** All fees, taxes, fines, and penalties collected under 75-10-901 through 75-10-945, except those collected by a justice's court, must be deposited in the solid waste management account as provided in 75-10-117 for use by the department in carrying out its functions and responsibilities related to solid waste management.

**75-10-913. Annual long-range plan submitted -- contents -- available to public.** (1) A person may not file an application for a certificate of site acceptability required by 75-10-916 unless the megalandfill has been adequately identified in a long-range plan at least 2 years prior to acceptance of an application by the department.

(2) The annual long-range plan must be submitted by July 1 of each year and must include the following:

(a) the general location, size, and type of all facilities to be owned and operated by the person for which construction is projected during the ensuing 2 years, as well as those facilities to be closed during the planning period;

(b) a description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;

(c) projections of the demand for the service rendered by the person and an explanation of the basis for those projections and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(d) additional information that the department by rule, on its own initiative, or upon the advice of interested state agencies requests in order to carry out the purposes of 75-10-901 through 75-10-945.

(3) The plan must be furnished to the governing body of each county in which any facility included in the plan under subsection (2)(a) is proposed to be located and must be made available to the public by the department. The applicant shall give public notice throughout the state by publishing at least once a week for 2 consecutive weeks a summary of the proposed plan in newspapers of general circulation. The plan must also be filed with the environmental quality council, the department of transportation, the department of fish, wildlife, and parks, and the department of natural resources and conservation. Interested persons may obtain a copy of the plan by written request and payment to the department of the costs of copying the plan.

**75-10-914. Study of included facilities.** If a person identifies a proposed facility in its long-range plan, submitted pursuant to 75-10-913, as one on which construction is proposed within the 2-year period following submission of the plan, the department shall begin to examine and evaluate the proposed site to determine whether construction of the proposed facility would unduly impair the environmental, social, and economic values described in 75-10-920. The study may be continued until a person files an application for a certificate under 75-10-916. Information gathered under this section may be used to support findings and recommendations required for issuance of a certificate and a license.

**75-10-916. Certificate required.** (1) A person may not construct a megalandfill in the state without first applying for and obtaining a certificate of site acceptability from the board.

(2) A certificate may only be issued pursuant to 75-10-916 through 75-10-930.

**75-10-917. Certificate transferable.** A certificate may be transferred, subject to the approval of the board, to a person who agrees to comply with the terms, conditions, and modifications contained in 75-10-901 through 75-10-945.

**75-10-918. Application -- filing and contents -- proof of service and notice.** (1) (a) An applicant shall file with the department an application for a certificate under 75-10-916 in a form that the board requires, containing the following information:

- (i) a description of the proposed location and of the facility to be built;
- (ii) a summary of any studies that have been made of the environmental, social, and economic impacts of the facility;
- (iii) a description of at least three reasonable alternate locations for the facility, a general description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the proposed location is best suited for the facility;
- (iv) baseline data for the primary and reasonable alternate locations;
- (v) at the applicant's option, an environmental study plan to satisfy the requirements of 75-10-901 through 75-10-945; and

(vi) other information that the applicant considers relevant or that the board by order or rule may require or that the department by order or rule may require.

(b) A copy or copies of the studies referred to in subsection (1)(a)(ii) must be filed with the department, if ordered, and must be available for public inspection.

(2) An application must be accompanied by proof of service of a copy of the application on the chief executive officer of each unit of local government, each county commissioner, city or county planning board, and solid waste district, and each federal agency charged with the duty of protecting the environment or of planning land use located in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located and on the following state government agencies:

- (a) environmental quality council;
- (b) department of fish, wildlife, and parks;
- (c) department of transportation; and
- (d) department of natural resources and conservation.

(3) An application must be accompanied by proof that public notice was given to persons residing in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located by publication of a summary of the application in newspapers of general circulation that will substantially inform those persons of the application.

**75-10-919. Supplemental material -- amendments.** (1) An application for an amendment of an application or a certificate must be in a form and contain information as the board by rule or the department by order prescribes. Notice of an amendment must be given as provided in 75-10-918(3).

(2) An application may be amended by an applicant any time prior to the report made by the department under 75-10-922. If the proposed amendment prevents the department from carrying out its duties and responsibilities under 75-10-901 through 75-10-945, the department may require additional filing fees as the department determines necessary or may require a new application and filing fee.

(3) The applicant shall submit supplemental material in a timely manner as requested by the department or as offered by the applicant to explain, support, or provide details with respect to an item described in the original application. This supplemental material may be submitted without filing an application for an amendment. The department's determination as to whether information is supplemental or whether an application for amendment is required is conclusive.

**75-10-920. Environmental, social, and economic factors evaluated during certification.** In evaluating applications for a certificate of site acceptability, the department shall give consideration to the following list of factors and regulations, where applicable, and may by rule add to the factors enumerated in this section:

(1) siting criteria for municipal solid waste landfills consistent with federal requirements as described in 40 CFR part 258;

(2) siting criteria described under the Montana Solid Waste Management Act, Title 75, chapter 10, part 2, and rules adopted under that part;

(3) the state solid waste management and resource recovery plan;

(4) solid waste disposal needs, including:

- (a) availability and desirability of alternative methods of solid waste disposal in lieu of the proposed facility;
- (b) promotional activities of the applicant that may have given rise to the need for the facility;
- (c) social changes resulting from the facility, including protection of public health and environmental quality; and
- (d) integrated waste management activities that could reduce the need for additional solid waste disposal capacity;

(5) land use impacts, including:

- (a) the area of land required and its ultimate use;
- (b) consistency with state and regional solid waste plans;
- (c) consistency with existing and projected nearby land use;
- (d) alternative uses of the site;

(e) the impact on the population already in the area and the population attracted by construction or operation of the facility;

- (f) the impact of availability of solid waste disposal at the facility on growth patterns and population dispersal;
- (g) construction materials and practices, including quality control and quality assurance plans to be followed during construction of all phases of the proposed facility;
- (h) scenic impacts;
- (i) the effects on natural systems, wildlife, and plant life;
- (j) the impacts on important historic, architectural, archaeological, and cultural areas and features;
- (k) the impacts on public facilities and accommodations;
- (l) opportunities for joint use with solid waste disposal-intensive industries; and
- (m) the economic impact on the local area, local government infrastructure, and existing industry;
- (6) water resources impacts, including:
  - (a) hydrologic studies of the adequacy of water supply and the impact of the facility on streamflow, lakes, and reservoirs;
  - (b) hydrologic studies of the impact of the facility on ground water, including vadose zone studies describing the potential for leachate to migrate from the facility to ground water;
  - (c) an inventory of effluents, including physical, chemical, and biological characteristics;
  - (d) hydrologic studies of effects of effluents on receiving waters;
  - (e) the effect of the facility on water quality;
  - (f) the facility's projected water uses;
  - (g) the effects on plant and animal life, including algae, macroinvertebrates, and fish population;
  - (h) effects on unique or otherwise significant ecosystems, such as wetlands; and
  - (i) ground water, vadose zone, and methane gas monitoring systems and programs;
- (7) characteristics of solid wastes that will be disposed of at the facility, including:
  - (a) the rate of solid waste disposal;
  - (b) the solid waste handling practices proposed to be used;
  - (c) the present and expected future physical and chemical characteristics of the solid waste; and
  - (d) inspection practices for preventing the illegal dumping of hazardous waste into the facility;
- (8) transportation practices, including:
  - (a) route and mode of transporting waste;
  - (b) environmental, social, and economic impacts of transportation facilities; and
  - (c) transfer facilities.

**75-10-921. Filing fee -- accountability -- refund -- use.** (1) (a) The applicant shall pay to the department a filing fee as provided in this section based upon the department's estimated costs of processing the application for a certificate. The filing fee must be deposited in the solid waste management account for the use of the department in administering 75-10-901 through 75-10-945. The initial filing fee may not exceed the following scale based upon the megalandfill's projected annual tonnage of waste:

- (i) a base fee of \$40,000; plus
- (ii) 20 cents per ton for every ton of waste over 200,000 tons for a new or existing megalandfill or facility not subject to 75-10-903(6)(b); or
- (iii) 20 cents per ton of waste over 300,000 tons for an existing megalandfill or facility pursuant to 75-10-903(6)(b).

(b) The department may allow a credit against the fee payable under this section for the applicant's costs of developing information or providing services required under 75-10-901 through 75-10-945 or required for preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, part 1, or the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq. The applicant may submit the information or a description of the services performed to the department, together with an accounting of the expenses incurred in preparing the information or performing the services. The department shall evaluate the applicability, validity, and usefulness of the data or services and determine the expenses that may be credited against the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time be reduced if the department determines that the amount to be credited is necessary to carry out its responsibilities under 75-10-901 through 75-10-945.

(2) (a) The department may contract with an applicant after the filing of a formal application for the development of information or the provision of services required under 75-10-901 through 75-10-945. The contract may continue an agreement entered into pursuant to 75-10-908. Payments made to the department under a contract must be credited against the fee payable under this section. The revenue derived from the filing fee must be sufficient to enable the department and the board to carry out their responsibilities under 75-10-901 through 75-10-945. The department may amend a contract to require additional payments for necessary expenses up to the limits set forth in subsection (1)(a) upon 30 days' notice to the applicant. The department and applicant may enter into a contract that exceeds the scale provided in subsection (1)(a).

(b) If a contract is not entered into, the applicant shall pay the filing fee in installments in accordance with a schedule of installments developed by the department; however, an installment may not exceed 20% of the total filing fee provided for in subsection (1).

(3) The applicant is entitled to an accounting of money spent and to a refund with interest at the rate of 6% a year of the portion of the filing fee not spent by the department in carrying out its responsibilities under 75-10-901 through 75-10-945. A refund must be made after all administrative and judicial remedies have been exhausted by all parties

to the certification proceedings.

(4) The revenue derived from the filing fees must be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out other responsibilities of the department and the board under 75-10-901 through 75-10-945.

**75-10-922. Study, evaluation, and report on proposed facility.** (1) After receipt of an application, the department shall within 90 days notify the applicant in writing that:

- (a) the application is accepted as complete; or
- (b) the application is not complete and list the deficiencies. Upon correction of these deficiencies and resubmission by the applicant, the department shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-10-913, 75-10-914, and 75-10-916 through 75-10-922, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-10-929. The department shall use, to the extent it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) Except as provided in 75-1-205(4) and 75-1-208(4)(b), within 1 year following acceptance of a complete application for a facility, the department shall make a report to the board that must contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, Title 75, chapter 1, if applicable.

**75-10-923. Voiding of application.** An application may be voided by the department for:

- (1) any material and knowingly false statement in the application or in accompanying statements or studies required of the applicant;
- (2) failure to file an application in substantially the form and content required by 75-10-918 and the rules adopted under 75-10-918; or
- (3) failure to deposit the filing fee as provided in 75-10-921.

**75-10-924. Hearing date – location – department to act as staff.** (1) Upon receipt of the department's report submitted under 75-10-922, the board shall set a date for a hearing to begin not more than 120 days after receipt of the report. A certification hearing must be conducted by the board in the county seat of the county in which the facility or the greatest portion of the facility is to be located.

(2) Except as provided in 75-10-926, the department shall act as the staff for the board throughout the decisionmaking process and the board may request that the department present testimony or cross-examine witnesses as the board considers necessary and appropriate.

**75-10-925. Certificate amendments.** (1) Within 30 days after notice of an amendment to a certificate is given as provided in 75-10-919, including notice to all active parties to the original proceeding, the department shall determine whether the proposed change in the facility would result in a material increase in any environmental, social, and economic impacts caused by the facility or a substantial change in the location of all or a portion of the facility as set forth in the certificate. If the department determines that the proposed change would result in a material increase in any environmental impact caused by the facility or a substantial change in the location of all or a portion of the facility, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate. After the hearing, the board shall grant, deny, or modify the amendment with conditions it considers appropriate.

(2) In cases where the department determines that the proposed change in the facility would not result in a material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility, the board shall grant the amendment either as applied for or upon terms or conditions as the board considers appropriate unless the department's determination is appealed to the board within 15 days after notice of the department's determination is given.

(3) If the department or the board, under subsection (4), determines that a hearing is required because the proposed change would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the applicant has the burden of showing by clear and convincing evidence that the amendment should be granted.

(4) If the department determines that the proposed change in the facility would not result in a material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility and a hearing is required because the department's determination is appealed to the board as provided in subsection (2), the appellant has the burden of showing by clear and convincing evidence that the proposed change in the facility would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility as set forth in the certificate.

**75-10-926. Hearing examiner -- restrictions -- duties.** (1) The board shall appoint a hearing examiner to conduct certification proceedings under 75-10-901 through 75-10-945. The hearing examiner may not be a member of the board or an employee of the department or the board. A hearing examiner must be appointed within 20 days after the department's report has been filed with the board.

(2) A prehearing conference must be held, following notice, within 60 days after the department's report has been filed with the board.

(3) The prehearing conference must be organized and supervised by the hearing examiner.

(4) The prehearing conference must be directed toward a determination of the issues presented by the application, the department's report, and an identification of the witnesses and documentary exhibits to be presented by the active parties who intend to participate in the hearing.

(5) The hearing examiner shall require the active parties to submit, in writing, and serve upon the other active parties all direct testimony that they propose and any studies, investigations, reports, or other exhibits that any active party wishes the board to consider. These written exhibits and any documents that the board itself wishes to use or rely on must be submitted and served at least 20 days prior to the date set for the hearing. For good cause shown, the hearing examiner may allow the introduction of new evidence at any time.

(6) The hearing examiner shall allow discovery that must be completed before the commencement of the hearing upon good cause shown and under other conditions as the hearing examiner prescribes.

(7) Public witnesses and other interested public parties may appear and present oral testimony at the hearing or submit written testimony to the hearing examiner at the time of their appearance. These witnesses are subject to cross-examination.

(8) The hearing examiner shall issue a prehearing order specifying the issues of fact and of law, identifying the witnesses of the active parties, naming the public witnesses and other interested parties who have submitted written testimony in lieu of appearance, outlining the order in which the hearing will proceed, setting forth those criteria listed in 75-10-929 as to which no issue of fact or law has been raised and that are conclusively presumed and are not subject to further proof except for good cause shown, and listing any other special rules to expedite the hearing that the hearing examiner adopts with the approval of the board.

(9) At the conclusion of the hearing, the hearing examiner shall declare the hearing closed and shall, within 60 days of that date, prepare and submit to the board proposed findings of fact, conclusions of law, and a recommended decision.

(10) The hearing examiner appointed to conduct a certification proceeding under this section shall ensure that the time of the proceeding, from the date the department's report is filed with the board until the recommended report and order of the examiner is filed with the board, does not exceed 9 calendar months unless extended by the board for good cause.

(11) The board or hearing examiner may waive all or a portion of the procedures set forth in subsections (2) through (8) to expedite the hearing for a facility when the department has recommended approval of a facility and no objections have been filed.

**75-10-927. Parties to certification proceeding -- waiver -- statement of intent to participate.** (1) The parties to a certification proceeding or to a proceeding involving the issuance of a decision, opinion, order, certification, or permit by the board under 75-10-901 through 75-10-945 may include as active parties:

(a) the applicant;

(b) each political entity, unit of local government, and government agency entitled to receive service of a copy of the application under 75-10-918;

(c) a person entitled to receive service of a copy of the application under 75-10-918;

(d) a nonprofit organization formed in whole or in part to:

(i) promote conservation or natural beauty;

(ii) protect the environment, personal health, or other biological values;

(iii) preserve historical sites;

(iv) promote consumer interests;

(v) represent commercial and industrial groups; or

(vi) promote the orderly development of the areas in which the facility is to be located; and

(e) any other interested person who establishes an interest in the proceeding.

(2) The department must be an active party in any certification proceeding in which the department recommends denial of all or a portion of a facility.

(3) The parties to a certification proceeding may also include, as public parties, any Montana citizen and any party referred to in subsections (1)(b) through (1)(e).

(4) A party waives the right to be a party if the party does not participate in the hearing before the board.

(5) Each unit of local government entitled to receive service of a copy of the application under 75-10-918 shall file with the board a statement showing whether the unit of local government intends to participate in the certification proceeding. If the unit of local government does not intend to participate, it shall list in this statement its reasons for failing to do so. This statement of intent must be published before the proceeding begins in a newspaper of general circulation within the jurisdiction of the applicable unit of local government.



**75-10-928. Record of hearing -- procedure -- rules of evidence -- burden of proof.** (1) Any studies, investigations, reports, or other documentary evidence, including those prepared by the department, that any party wishes the board to consider or that the board itself expects to use or rely upon must be made a part of the record.

(2) A record must be made of the hearing and of all testimony taken.

(3) In a certification proceeding held under 75-10-924, the applicant has the burden of showing by clear and convincing evidence that the application should be granted and that the criteria of 75-10-929 are met.

(4) All proceedings under 75-10-924 through 75-10-928 are governed by the procedures set forth in 75-10-924 through 75-10-928, the procedural rules adopted by the board, and the Montana Rules of Evidence unless one or more rules of evidence are waived by the hearing examiner upon a showing of good cause by one or more of the parties to the hearing. No other rules of procedure or evidence apply except that the contested case procedures of the Montana Administrative Procedure Act apply if not in conflict with the procedures set forth in 75-10-924 through 75-10-928 or the procedural rules adopted by the board.

**75-10-929. Decision of board -- findings necessary for certification.** (1) Within 90 days after submission of the recommended decision by the department, the board shall make complete findings, issue an opinion, and render a final decision upon the record, either granting or denying the application for a certificate as filed or granting it upon terms, conditions, or modifications of the siting of the facility as the board considers appropriate.

(2) The board may not grant a certificate either as proposed by the applicant or as modified by the board unless it finds and determines:

- (a) the nature of the probable environmental impact;
- (b) that the facility minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;
- (c) that the location of the facility as proposed conforms to applicable state and local laws and regulations, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside of the directly affected government subdivisions;
- (d) that the facility will serve the public interest;
- (e) any impacts of the facility according to each of the criteria listed in 75-10-920;
- (f) the solid waste disposal needs listed in 75-10-920(4); and
- (g) that the applicant has fully mitigated the loss of wildlife habitat, through either onsite or offsite habitat improvements.

(3) In determining that the facility will serve the public interest, the board shall consider:

- (a) the items listed in subsections (2)(a) and (2)(b);
- (b) the benefits to the applicant and the state resulting from the proposed facility;
- (c) the effects of the economic activity resulting from the proposed facility;
- (d) the effects of the proposed facility on the public health, welfare, and safety; and
- (e) any other factors that it considers relevant.

**75-10-930. Conditions imposed.** If the board determines that the location of all or a part of the proposed megalandfill should be modified, it may condition its certificate upon the modification, provided that the persons residing in the area affected by the modification have been given reasonable notice of the modification.

**75-10-933. License required.** (1) A person may not commence to construct a megalandfill in the state without first applying for and obtaining a license pursuant to 75-10-221. The licensing process must be concurrent with the certification process required in 75-10-916 through 75-10-930.

(2) The department shall make the decision to grant or deny the license within 30 days of the certification decision, as provided in 75-10-929.

(3) Once a license has been issued, a megalandfill may not be constructed, operated, or maintained except in conformity with the license and any terms, conditions, and modifications contained in the license.

**75-10-934. License transferable.** A license may be transferred, subject to the approval of the department, to a person who agrees to comply with the terms, conditions, and modifications contained in 75-10-901 through 75-10-945.

**75-10-935. Opinion issued with decision -- contents.** (1) In rendering a decision on an application for a license for a megalandfill, the department shall issue an opinion stating its reasons for the action taken.

(2) In addition to the requirements of 75-10-221, any license issued by the department shall include the following:

- (a) an environmental evaluation statement related to the megalandfill being certified. The statement must include but

not be limited to analysis of the following information:

- (i) the environmental impact of the proposed facility;
  - (ii) any adverse environmental effects that cannot be avoided by issuance of the license;
  - (iii) problems and objections raised by other federal and state agencies and interested groups; and
  - (iv) alternatives to the proposed facility.
- (b) a plan for monitoring environmental effects of the proposed facility;
- (c) a plan for monitoring the certified megalandfill site between the time of certification and completion of construction; and
- (d) a statement signed by the applicant showing agreement to comply with the requirements of 75-10-901 through 75-10-945 and the conditions of the certificate.

**75-10-938. Monitoring.** The department shall monitor the operations of all certificated facilities to ensure continuing compliance with 75-10-901 through 75-10-945 and with certificates issued under 75-10-916 and to discover and prevent noncompliance with 75-10-901 through 75-10-945 or certificates issued under 75-10-916.

**75-10-939. Revocation or suspension of license.** A license may be revoked or suspended by the department following notice and an opportunity for a hearing before the department for:

- (1) any material false statement in the application or in accompanying statements or studies required of the applicant if a true statement would have warranted the department's refusal to grant a license;
- (2) failure to comply with the terms or conditions of the certificate; or
- (3) violation of any provision of 75-10-901 through 75-10-945, rules adopted under 75-10-901 through 75-10-945, or orders of the department.

**75-10-940. Enforcement by residents.** (1) A person with knowledge that a requirement of 75-10-901 through 75-10-945 or a rule adopted under 75-10-901 through 75-10-945 is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that states the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the statements subjects the person to the penalties prescribed for a violation of 45-7-202.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the person may bring an action of mandamus in the district court of the first judicial district of Montana. If the court finds that a requirement of 75-10-901 through 75-10-945 or a rule adopted under 75-10-901 through 75-10-945 is not being enforced, the court may order the public officer or employee whose duty it is to enforce the requirement or rule to perform those duties. If he fails to do so, the public officer or employee must be held in contempt of court and is subject to the penalties provided by law.

**75-10-941. Action to recover damages to water supply.** An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from a surface or underground source may sue a person to recover damages for contamination, diminution, or interruption of the water supply proximately resulting from the operation of a facility. The remedy provided in this section does not exclude the use of any other remedy that may be available under the laws of the state.

**75-10-942. Judicial review of department and board decisions.** (1) An applicant aggrieved by the final decision of the board on an application for a certificate or the final decision of the department on an application for a license may obtain judicial review of that decision by filing a petition in district court.

(2) The judicial review procedure is the same as that for contested cases under Title 2, chapter 4, part 7.

(3) This section does not prohibit the department from holding a hearing on all matters that are not the subject of a pending appeal by the applicant under subsection (1).

**75-10-943. Penalties for violation -- civil action by attorney general.** (1) (a) A person who commences to construct or operate a megalandfill without obtaining a certificate required under 75-10-916 and a license required under 75-10-933, who constructs, operates, or maintains a facility other than in compliance with the certificate or violates any other provision of 75-10-901 through 75-10-945 or any rule or order adopted under 75-10-901 through 75-10-945, or who knowingly submits false information in any report, long-range plan, or application required by 75-10-901 through 75-10-945 is liable for a civil penalty as provided in subsection (2).

(b) Each day of a continuing violation constitutes a separate offense.

(c) The penalty is recoverable in a civil suit brought by the attorney general on behalf of the state in the district court

of the first judicial district of Montana.

(2) A person who knowingly violates the provisions of subsection (1) shall be fined not more than \$25,000 for each violation or be imprisoned for not more than 1 year, or both. Each day of a continuing violation constitutes a separate offense.

(3) In addition to any penalty provided in subsection (1) or (2), whenever the department determines that a person is violating or is about to violate any of the provisions of 75-10-901 through 75-10-945, it may refer the matter to the attorney general who may bring a civil action on behalf of the state in the district court of the first judicial district of Montana for injunctive or other appropriate relief against the violation and to enforce 75-10-901 through 75-10-945 or a certificate issued under 75-10-916. Upon a proper showing, a permanent or preliminary injunction or temporary restraining order must be granted without bond.

(4) The department shall also enforce 75-10-901 through 75-10-945 and may bring legal actions to accomplish the enforcement through its own legal counsel.

(5) All fines and penalties collected must be deposited in the solid waste management account for the use of the department in administering 75-10-901 through 75-10-945.

**75-10-944. Order not stayed by appeal – stay or suspension by court – limitations.** An appeal from a department order does not automatically stay or suspend the operation of the order. The court may, upon motion by a party, stay or suspend, in whole or in part, the operation of the department's order on terms the court considers just. The court's action must be in accordance with the practice of courts exercising equity jurisdiction, subject to the following limitations:

- (1) A stay may not be granted without notice to the parties and an opportunity to be heard by the court.
- (2) A department order may not be stayed or suspended without finding that irreparable damage would otherwise result to the party seeking the stay or suspension, and a stay or suspension must specify the nature of the damage.

**75-10-945. Surety bond.** If an order of the department is stayed or suspended, the court may require a bond with good and sufficient surety conditioned that the party petitioning for review answer for all damages caused by the delay in enforcing the order of the department. The cost of the bond is not chargeable to the applicant as part of the fee. If the party petitioning for review prevails upon final resolution of an appeal, the party does not forfeit bond and is not responsible for damages caused by delay.

**75-10-950. Definitions.** As used in 75-10-950 through 75-10-954, the following definitions apply:

(1) "Applicant" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity that applies for a license to operate a megalandfill pursuant to 75-10-221.

(2) "Board" means the board of environmental review provided for in 2-15-3502.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) (a) "Megalandfill" means, except as provided in subsection (4)(b), any new or existing solid waste management system licensed under 75-10-221 that accepts more than 200,000 tons of solid waste a year or an ash monofill that accepts more than 35,000 tons of ash a year.

(b) An existing solid waste landfill facility that accepted 100,000 tons a year of solid waste as of December 31, 1991, is not considered a megalandfill or facility until it accepts more than 300,000 tons a year of solid waste.

(5) "Natural resource" means ground water, surface water, soil, wildlife, and other physical and biological resources as determined by the department by rule.

**75-10-951. Megalandfill financial assurance – release.** (1) As a condition of a license to operate a megalandfill under 75-10-221, an applicant shall provide financial assurance sufficient to ensure the restoration or replacement of any natural resource damaged or impaired as a result of the construction, operation, or closure of the megalandfill. The department shall determine the amount of financial assurance that must be provided based on an assessment of the license application and the applicant's estimated cost of reclaiming, restoring, or replacing natural resources that may be damaged or impaired by the applicant's proposed operations.

(2) The department shall adopt rules to specify the terms and conditions of financial assurance.

(3) To satisfy the financial assurance requirement, the applicant shall file with the department a bond that is payable to the state of Montana with a surety satisfactory to the department, conditioned upon the faithful performance of the requirements of this section and the rules of the department.

(4) The bond approved by the department may not be less than the estimated cost to the state to reclaim, restore, or replace damaged or impaired natural resources.

(5) Every 2 years the department shall evaluate the amount of the bond provided for a licensed megalandfill. If the department determines that the amount of the bond does not represent the present cost of reclaiming, restoring, or replacing natural resources that may be damaged or impaired by the operation, the department may modify the terms and conditions of the bond.

(6) The department may not release an operator from the financial assurance requirement and may not release the bond:

- (a) for a minimum of 30 years after the megalandfill has closed;
- (b) until the department determines that the natural resources associated with the megalandfill have been permanently reclaimed, restored, or replaced to the quantity and quality that prevailed prior to the commencement of the licensed operations and that the megalandfill presents no significant future threat to those natural resources; and
- (c) until a public hearing has been held. The department shall make all information that is relevant to the decision on whether to release an operator from the financial assurance requirement readily available to interested persons, and no less than 45 days prior to the public hearing the department shall:

(i) publish notice of the hearing in newspapers of general statewide circulation and circulation in the county where the megalandfill is located; and

(ii) take other appropriate measures to ensure broad distribution of the hearing notice.

(7) A person may submit to the department information relevant to the department's decision to release an operator from all or any part of the financial assurance requirement for a period of 30 days after the date of the public hearing required under subsection (6).

(8) A person may request the department to reconsider its decision to release an operator from all or any part of the financial assurance requirement based upon information the person submits to show that the licensee has not reclaimed, restored, or replaced the quantity or quality of natural resources that prevailed prior to the commencement of the licensed operations. The department's response to a request to reconsider its decision to release an operator from all or any part of the financial assurance requirement is the final agency decision.

**75-10-952. Bond forfeiture.** At the board's discretion, the failure of a licensee to reclaim, restore, or replace damaged or impaired natural resources to the department's satisfaction, as required under 75-10-951(6) or any rule adopted under 75-10-951(6), may result in bond forfeiture.

**75-10-953. Reclamation by board.** (1) Pursuant to the provisions of 75-10-950 through 75-10-954, the board may reclaim, restore, or replace any affected natural resources for which a bond has been forfeited.

(2) The board may have reclamation work done by department employees or by employees of other governmental agencies or soil conservation districts or through contracts with qualified persons.

(3) Any funds or any public works programs available to the board may be used and expended to reclaim, restore, or replace natural resources that have been damaged or impaired as a result of the construction, operation, or closure of a megalandfill. The board shall cooperate with federal, state, and private agencies to engage in cooperative projects under this section.

(4) Agents, employees, or contractors of the department may enter upon any land for the purpose of conducting studies or exploratory work to determine whether a megalandfill has been reclaimed and rehabilitated in accordance with the requirements of 75-10-951(6). Upon request of the board, the attorney general shall bring an injunctive action to restrain any interference with the exercise of the right to enter and inspect granted in this subsection.

**75-10-954. Megalandfill reclamation account – deposit of funds.** (1) There is a megalandfill reclamation account in the state special revenue fund provided for in 17-2-102.

(2) All forfeited bonds that have been or will be paid to the department under the provisions of 75-10-950 through 75-10-954 must be deposited in the account.

(3) Money in the account is available to the department for the reclamation, restoration, and replacement of natural resources damaged or impaired by the megalandfill. Unencumbered and unexpended money remaining in the account at the end of a fiscal year may not lapse but must be carried forward for the purposes of this subsection until appropriated by subsequent legislative action.

(4) All fees, fines, penalties, and other money paid to the department under the provisions of 75-10-950 through 75-10-954 must be deposited in the state general fund.